IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL REVISION APPLICATION No.160 of 1998

Smt. Najamunissa Mubarak Mujawar ..Applicant.

Vs.

1. Mubarak S. Mujawar

2. The State of Maharashtra ..Respondents.

Mr R. S. Kate for the Applicant.
None for the respondent No.1.
Mr K. V. Saste, A.P.P. for the Respondent No.2.

CORAM: V.C. DAGA,J.
DATED: 4TH JULY, 2007.

P.C.:-

1. Heard learned counsel for the applicant and learned A.P.P. for the State. Perused revision petition and order impugned therein.

2. This revision is directed against the order dated 26.3.1998 passed in Criminal Revision Application No. 132 of 1995, whereby the revision was allowed and the order dated 28.12.1994 passed by the learned J.M.F.C. Sangli in Cri. Misc. Appln. No. 43 of 1992 under Section 125 of the Criminal Procedure Code granting maintenance in the sum of Rs. 500/- per month came to be set aside.

3. The learned Sessions Judge, Sangli, in

the impugned order while disposing of the revision application held that the divorced Muslim woman is not governed by the provisions of Section 125 of the Code of Criminal Procedure but she is governed by the provisions of Muslim Women's (Protection of Rights on Divorce) Act, 1986. This order is a subject matter of challenge as stated hereinabove.

4. Having heard rival counsel; it is needless to mention that the learned Judicial Magistrate, First Class as well as learned Sessions Judge proceeded on the assumption that the applicant is a divorced Muslim woman. The said finding is based on the case of **Chandbi Ex Wife of Bandesha Mujawar vs. Bandesha s/o Balwant Mujawar, A.I.R. 1961 Bombay 121** which was holding the field at the relevant time. The said judgment of this Court is now no longer good law in view of the recently reported Full Bench Judgment of this Court in the case of **Dagdu Chotu vs. Rahimbi Dagdu, 2002 (3) Mh.L.J.602,** wherein the law relating to the divorce and proof thereof has been considered and the case of **Chandbi**

(supra) came to be overruled by the Full Bench of this Court.

5. In the above view of the matter, impugned judgment and order cannot be sustained. It needs to be remitted back to the J.M.F.C. for consideration de-novo in the light of Full Bench Judgment of this Court in the case of **Dagdu Chotu (supra)** as well as **Karim Abdul Rehman vs Shehnaz Karim, 2000 (3) Mh.L.J.555**.

6. In the result, impugned order is quashed and set aside. The application under Section 125 of the Code of Criminal Procedure moved by the applicant be restored to the file of Judicial Magistrate, First Class, Sangli. The said Court is directed to decide the said application afresh, as expeditiously as possible, at any rate within three months from the date of the receipt of copy of this order. Needless to mention that during this period applicant shall be entitled to interim maintenance @ Rs. 500/- p.m. till disposal of her application on merits. All rival contentions are kept open.

7. Revision application stands disposed of with cost quantified in the sum of Rs. 5,000/-.

(V.C. DAGA,J.)